

DIRECT TESTIMONY
OF
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TELECOMMUNICATIONS DIVISION
ILLINOIS COMMERCE COMMISSION

Petition For Suspension Or Modification Of Section
251(b)(2) Requirements Of The Federal
Telecommunications Act Pursuant To Section
251(f)(2) Of Said Act, For Entry Of Interim Order; And
For Other Necessary Relief

DOCKET NO. 04-0194

MAY 20, 2004

1 **Introduction**

2

3 **Q. Please state your name and business address.**

4 A. My name is Jeffrey H. Hoagg. My business address is 527 East Capitol
5 Avenue, Springfield, Illinois 62701.

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7 **Q. By whom are you employed and in what capacity?**

8 A. I am employed as the Principal Policy Advisor in the Telecommunications
9 Division of the Illinois Commerce Commission

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11 **Q. Please describe briefly your educational background and work
12 experience.**

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14 A. I graduated from Cornell University with a Master of Arts in Economics in
15 1986. I was admitted to doctoral candidacy at Cornell and completed all
16 requirements for the Ph.D. in Economics other than completion of the
17 dissertation. My major field of graduate study was Industrial Organization
18 and Regulation.

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20 I held the positions of Telecommunications Tariffs and Rates Analyst,
21 Telecommunications Policy Analyst, and Special Assistant to the Deputy
22 Chair of the Commission at the New York Public Service Commission. I
23 performed economic and policy analyses of industry and regulatory

24 issues, and formulated recommendations for Commission members and
25 other decision-makers. Among other duties, I served as Staff team leader
26 for issues of pricing and provisioning of unbundled network elements
27 (“UNEs”), Expanded Extend Link and Digital Subscriber Line-based
28 services, and as a member of the team that negotiated terms of Bell
29 Atlantic - New York’s Section 271 “Pre- Filing Statement”. I was appointed
30 as staff to the New York Telecommunications Exchange, a “blue-ribbon”
31 panel convened to coordinate that state’s overall telecommunications
32 policies. I also was appointed as Staff to the Federal/State Open Network
33 Architecture Joint Conference.

34
35 In 1993 I became Special Advisor to Commissioner Barrett of the Federal
36 Communications Commission on Common Carrier issues. I provided
37 analyses and policy recommendations on a wide range of
38 telecommunications issues, and functioned as liaison with the offices of
39 other Commissioners, the Chairman and the FCC’s Common Carrier
40 Bureau. I prepared testimony, speeches and presentations for delivery
41 before Congress and various regulatory and industry groups, and drafted
42 for issuance informal and formal documents, including Separate
43 Statements and Dissents from Commission Reports and Orders.

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Suspension of Local Number Portability Requirements

Q. What is the purpose of your testimony?

A. The purpose of this testimony is to offer my opinion as to whether the Commission should suspend, under Section 251(f)(2) of the Federal Telecommunications Act of 1996 (“the Act”), Viola Home Telephone Company’s (“Viola”) obligation to implement wireline to wireless local number portability (“W-W LNP”) in its service territory under Section 251(b)(2) of the Act and FCC rules and orders.

Q. Please summarize your testimony.

A. I conclude that several policy factors and considerations unique to smaller, more rural ILECs in Illinois render the Federal Communications Commission (FCC) decision to require wireline-to-wireless number portability by these carriers no later than May 24, 2004 premature with respect to this carrier. It is my opinion that given the state of the record, a temporary suspension is necessary to avoid imposing a significant adverse economic impact on Viola’s customers. I also conclude this would be in the public interest. I recommend that the Commission grant a temporary suspension of W-W LNP requirements for a period of approximately 2 years.

Q. As a general matter, is deployment of number portability capabilities by Illinois local exchange carriers desirable?

Yes. Congress required all telecommunications carriers to provide number portability pursuant to rules promulgated by the FCC.¹ The FCC has promulgated a number of such rules. It has stated, on at least one occasion, that the failure of telecommunications carriers to provide number portability “hampers the development of local competition.”² The FCC has emphasized that carriers offering number portability also participate in number pooling to optimize numbering resources, which benefits consumers by staving off the creation of new area codes.³

Q. On what basis may the Commission consider a potential suspension or modification of the FCC’s current W-W LNP requirements, as they apply to Viola?

A. Section 251(f)(2) of the 1996 Act states that:

A local exchange carrier with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to

¹ See 47 U.S.C. § 251(b)(2) (requiring all telecommunications carriers to provide number portability to its customers “in accordance with requirements prescribed by the [FCC]”).

² See e.g., *Telephone Number Portability*, Third Report and Order, CC Docket. 95-116, 13 FCC Rcd 11701, 11702-04, ¶¶ 3-4 (1998) (where the FCC “recognized that the inability of customers to retain their telephone numbers when changing local service providers hampers the development of local competition”).

³ *Fourth Numbering Resource Optimization Order*, CC Docket No. 99-200, FCC 03-126, at ¶¶ 1, 15, 18 (June 18, 2003)

the extent that, and for such duration as, the State commission determines that such suspension or modification—

(A) is necessary--

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

It is my understanding that Viola has fewer than two percent of subscriber lines nationwide (i.e., is a “2% carrier”). Accordingly, the Commission is authorized to suspend application of W-W LNP requirements for Viola if it finds that such action would be necessary under at least one of the three Section 251(f) (2)(A) “tests”, and also would be consistent with the public interest, convenience and necessity.

Q. Is it your understanding that Viola has received a bona fide request for number portability from at least one wireless carrier?

A. Yes. Although I am not an attorney, it is my understanding that Viola has received a bona fide request for wireline to wireless number portability from at least one wireless carrier.

Section 251(f)(2)(A) of the 1996 Act

Q. Which of the standards set forth in Section 251(f)(2)(A) of the 1996 Act is most applicable to your analysis?

A. For several reasons, I focus on Section 251(f)(2)(A)(i) of the Act as the most directly applicable of the three standards that appear in Section 251(f)(2)(A). Specifically, I conclude that a temporary suspension is necessary to avoid a significant adverse economic impact on users of telecommunications services generally. First, FCC rules provide that Viola may recover most LNP-related costs from end users (on a per-access line basis as prescribed in those rules) over a period of five years. (47 C.F.R. §§ 52.21-52.33). It is my understanding that Viola will do so if and when it is required to implement W-W LNP. Since costs associated with W-W LNP will be borne by Viola customers generally, a central question for the Commission is whether such costs would cause a “significant adverse economic impact on users of telecommunications services generally.”

In this specific application of Section 251(f)(2)(A)(i) of the Act, I believe the phrase “users of telecommunications services generally” is best understood to refer to the general body of Viola subscribers. In my view, the fact that W-W LNP costs would be borne largely by end users warrants a Commission focus on Section 251(f)(2)(A)(i) of the Act. Consistent with this, I do not address Section 251(f)(2)(A)(ii) of the Act.

Second, Engineering Staff members assigned to this proceeding have concluded that deployment of W-W LNP by Viola is technically feasible. I believe Section 251(f)(2)(A)(ii) and Section 251(f)(2)(A)(iii) of the Act are not, and should not be, at issue in this proceeding.

Q. In your opinion, would imposition of costs associated with deployment of W-W LNP cause a “significant adverse economic impact on users of telecommunications services generally” for Viola telephone subscribers?

A. Yes. Based on the available evidence, I believe imposition of these costs on Viola telephone subscribers (i.e., access line purchasers) at this time would, from a policy perspective, constitute a significant adverse economic impact. Based on the available information, Staff’s best estimate of what Viola’s costs per access line (single line residential and business) might be, pursuant to FCC rules, is \$1.66 per line per month. In comparison, the monthly per line surcharge for SBC Illinois subscribers for wireline-to-wireline number portability is \$0.28. I note that consumer demand for wireline-to-wireline number portability has been very high. It is my understanding that consumer demand for W-W LNP, at least to date, has been comparatively low.

I am not aware of any quantitative or precise measure (or any generally accepted methodology) to determine whether a given level of costs or charges would cause “a significant adverse economic impact on users of

telecommunications services generally.” I believe this is a matter requiring careful application of judgment on a case-specific basis. In this instance, that application leads me to conclude that a temporary suspension of W-W LNP requirements is warranted. The estimated cost per access line for Viola is higher than the wireline-to-wireline surcharge for SBC Illinois. While not directly comparable, in my view, the figure for SBC Illinois provides a useful benchmark. In my opinion, the estimated per line cost for Viola subscribers appears unduly high in view of the expected demand for (and subscriber benefits associated with) W-W LNP at this time. I develop this point in the following several questions and answers.

Q. In your opinion, can the Commission determine whether W-W LNP costs would cause significant adverse economic impact on Viola’s customers without examining the benefits those customers would receive from W-W LNP?

A. No. In my view, it is not possible to determine whether W-W LNP costs would significantly adversely impact users without careful consideration of the benefits users generally would realize from deployment of W-W LNP.

A simple hypothetical example illustrates this. Suppose a cost increase of \$1.00 per access line per month was imposed on Viola’s customers, but they received in return no tangible benefits of any kind. I believe under these circumstances this \$1.00 cost increase per access line would cause

a “significant adverse economic impact on users of telecommunications services generally.” Suppose, however, that a \$1.00 cost increase per access line per month would enable each of Viola’s end users to obtain broadband service from the company. In this case, I believe users generally would not experience a significant adverse impact as a result of the surcharge. Costs cannot be examined in isolation, with no reference to the associated benefits, when determining the impact on users generally pursuant to Section 251(f)(2)(A)(i) of the Act.

Q. What level of benefits would Viola’s telephone users generally receive as a result of deployment of W-W LNP?

A. I believe an assessment of these benefits requires consideration of two categories of Viola telephone subscribers. The first category is composed of subscribers who would not, for whatever reason, port their wireline telephone number to a wireless carrier. These subscribers would receive what could be called “indirect” benefits from W-W LNP. They benefit indirectly from the fact that other Viola subscribers can and do take advantage of the ability to port numbers from wireline to wireless carriers. (Note, however, that these subscribers share directly in costs associated with W-W LNP since these costs are recovered over all access lines). The second category of subscribers is made up of those who choose to port a wireline telephone number to wireless service. These subscribers take “direct” advantage of the benefits of W-W LNP.

In my opinion, these “direct” benefits (realized by those who port numbers) are considerably larger, per subscriber, than any indirect benefits gained by the remaining subscribers not porting numbers. If this is correct, the level of benefits realized by Viola’s subscribers would be determined in large measure by the number of customers choosing to port their wireline number to a wireless carrier. If no subscribers do so, in my opinion the benefits from deployment of W-W LNP would be extremely low. If very few subscribers do so, benefits received generally would be very modest. If larger numbers of subscribers port numbers, all else equal, benefits from W-W LNP would be commensurately larger.

Thus, W-W LNP benefits for Viola’s users would be difficult to assess without knowing the expected or approximate “take rate” (percentage of Viola customers opting to port numbers). This figure is unknown since Viola has not implemented W-W LNP, and would not be required to do so until May 24, 2004 at the earliest. However, W-W LNP has been in effect since November 24, 2004 in the territories of Illinois’ larger ILECs. Thus, there is some Illinois-specific information upon which to draw conclusions concerning the take rate for W-W LNP (and the level of benefits associated with W-W LNP).

Based on my discussions with representatives from SBC and Verizon, the information available concerning W-W LNP “take rates” in Illinois suggests that the demand for (and benefits associated with) W-W LNP would be

very low for Viola subscribers at this time. As of January 2004, only approximately 0.02 percent of Illinois end-user customers with access to W-W LNP had taken advantage of this capability.

Q. Wouldn't at least some benefits associated with W-W LNP be sacrificed or foregone if the Commission temporarily suspends W-W LNP requirements?

A. Yes. Some level of such benefits would be foregone, or at a minimum, be deferred into the future. Significantly, however, the costs incurred to receive those benefits also would, at minimum, be deferred, and thus not incurred for the duration of a temporary suspension. If the current level of benefits does not exceed the accompanying costs, then Viola subscribers are certain or likely to realize positive net benefits from a temporary suspension of W-W LNP requirements.

Q. Please summarize your conclusions regarding the application of Section 251(f)(2)(A)(i) of the Act in this proceeding.

A. In my view, the estimated demand for W-W LNP (and consumer benefits associated with W-W LNP) currently is quite low in relation to the estimated costs Viola subscribers would bear to receive those benefits. It is my opinion that deployment of W-W LNP at this time would cause a significant adverse economic impact on Viola subscribers, since all such subscribers would be compelled to pay an estimated \$1.66 per month to deploy the function, but very few are likely to elect to port numbers.

Accordingly, the Commission should grant a temporary suspension of W-W LNP requirements to forestall that significant adverse impact.

A temporary suspension is particularly appropriate in my view, since Viola subscribers choosing not to “port” their landline telephone number to a wireless carrier (presumably because they perceive insufficient value in doing so), will pay the bulk of the costs associated with W-W LNP. Most, if not all, of those Viola subscribers choosing to “port” their landline number to wireless service likely would have no further subscriber relationship with Viola. These former Viola subscribers thus would not contribute toward the costs of W-W LNP (recovered by Viola on a per-access line basis).

The Public Interest, Convenience and Necessity

Q. In order to suspend temporarily the FCC’s W-W LNP requirements, must the Commission find that such action would be consistent with the public interest, convenience and necessity?

A. Yes. Although I am not an attorney, as I understand Section 251(f)(2)(B) of the 1996 Act, a Commission decision to suspend or modify these requirements would require an explicit Commission determination that a suspension or modification would be consistent with the public interest, convenience and necessity.

Q. In your opinion, would a temporary suspension of the FCC's W-W LNP requirements be consistent with the public interest, convenience and necessity?

A. Yes. A temporary suspension would be consistent with the public interest, convenience and necessity for several reasons. First, as discussed above, the available information concerning the expected demand for W-W LNP by Viola's customers indicates demand would be quite low. More complete and reliable information concerning demand and benefits will be available in the future through examination of demand growth for W-W LNP in the territories of SBC Illinois and Verizon. Evidence concerning demand for W-W LNP by Verizon and SBC Illinois customers (and other subscribers nationwide) would provide a more comprehensive benchmark for the expected demand of Viola subscribers. The Commission should suspend W-W LNP requirements for Viola while this evidence is gathered.

Q. Would a temporary suspension also provide the Commission with greater certainty about costs associated with W-W LNP (in the event the Commission again considers suspension or modification of W-W LNP requirements)?

A. Yes. A temporary suspension would permit the Commission greater certainty concerning the costs subscribers would pay for W-W LNP. Data concerning actual W-W LNP surcharges around the country would become available for consideration by the Commission if it grants a temporary suspension in this proceeding.

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318 There is a further important consideration stemming from the current
319 uncertainties surrounding the demand for, and costs of, W-W LNP. These
320 uncertainties give rise to an asymmetry in the impact the Commission's
321 decision in this proceeding could have upon Viola's subscribers. If the
322 analysis presented in this testimony is correct, the risks of significant loss
323 or "downside" from a decision to temporarily suspend W-W LNP
324 requirements are quite small. As previously noted, suspension would
325 defer both the benefits and costs of W-W LNP deployment. Based on the
326 available information, it appears likely that these deferred (or foregone)
327 costs would exceed the corresponding deferred (or foregone) benefits for
328 a 2-year suspension. The same cannot be said, however, for a
329 Commission decision not to grant a temporary suspension of W-W LNP
330 requirements. In this event, Viola subscribers would be compelled to
331 begin paying the costs of W-W LNP almost immediately.

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333 **Q. What additional considerations cause you to conclude that**
334 **temporary Commission suspension of W-W LNP requirements would**
335 **be consistent with the public interest, convenience and necessity?**

336 A. In important respects, "2% carriers" such as Viola are distinguishable from
337 larger Illinois carriers in the impacts W-W LNP requirements would have
338 on them, and ultimately on their customers. A significant difference
339 concerns the rating and routing arrangements for traffic to telephone
340 numbers "ported" pursuant to the FCC's W-W LNP requirements. Viola,

and other Illinois “2% carriers”, would route such traffic to the tandem switches of larger Illinois carriers such as SBC Illinois and Verizon. (These larger carriers, due in part to their vastly larger networks, are able to route their own such “ported” traffic to their own tandem switches for delivery to wireless carriers). In its W-W LNP Orders, the FCC did not resolve certain rating and routing questions surrounding this traffic that are specific to “2%” carriers such as Viola. The following passages make clear that such determinations are forthcoming:

The National Exchange Carrier Association (NECA) and National Telecommunications Cooperative Association (NTCA), for example, argue in their joint comments, that when wireless carriers establish a point of interconnection outside of a rural LEC’s serving area, a disproportionate burden is placed on rural LECs to transport originating calls to the interconnection points. [footnote deleted] They argue that requiring wireline carriers to port telephone numbers to out-of-service area points of interconnection could create an even bigger burden. Other carriers point out, however, that issues associated with the rating and routing of calls to ported numbers are the same as issues associated with rating and routing of calls to all wireless numbers. [footnote deleted]

We recognize the concerns of these carriers, but find that they are outside the scope of this order. As noted above, our declaratory ruling with respect to wireline-to-wireless porting is limited to ported numbers that remain rated in their original rate centers. We make no determination, however, with respect to the routing of ported numbers, because the requirements of our LNP rules do not vary depending on how calls to the number will be routed after the port occurs. Moreover, as CTIA notes, the rating and routing issues raised by the rural wireline carriers have been raised in the context of non-ported numbers and are before the Commission in other proceedings. [footnote deleted] Therefore, without prejudging the outcome of any other

376 proceeding, we decline to address these issues at this time
377 as they relate to intermodal LNP.⁴
378

379 In my opinion, a significant benefit of a temporary suspension of W-W LNP
380 requirements is the likelihood that during such suspension the FCC will
381 clarify the rating, routing and compensation arrangements and procedures
382 that are now in question.

383
384 While a number of outcomes are possible, the FCC might resolve these
385 issues by relieving, or significantly reducing, any cost burdens on 2%
386 carriers (and thus ultimately their subscribers) associated with the
387 transport of traffic to telephone numbers “ported” pursuant to W-W LNP
388 requirements. Such a result, combined with evidence that subscriber
389 demand for W-W LNP is higher than Viola currently contemplates, might
390 cause the company to conclude that W-W LNP is in the interest of its
391 subscribers.

392
393 **Q. Are you aware of any court challenges to the FCC’s requirement that**
394 **“2% carriers” such as Viola deploy W-W LNP?**

395 A. Yes. I understand that there are three challenges (pending before the
396 Federal Court of Appeals for the District of Columbia) to various aspects of
397 the FCC’s Orders imposing W-W LNP requirements on “2%” carriers.
398 These court proceedings raise additional considerations that support a
399 temporary suspension of W-W LNP requirements. If the Commission

⁴ In re Telephone Number Portability, Memorandum Opinion and Order and Further Notice of

does not now temporarily suspend these requirements, and the “2% carriers” prevail partially or wholly in these proceedings, it is possible that Viola (and ultimately its subscribers) would incur costs associated with W-W LNP, even if Viola ultimately were not required to deploy W-W LNP at all. Absent a Commission suspension, it appears Viola would incur at least “start-up” costs to implement W-W LNP during 2004 if it is to avoid violating current W-W LNP requirements.

Q. Please summarize your conclusions regarding whether a Commission suspension of the FCC’s W-W LNP requirements would be consistent with the public interest, convenience and necessity.

A. I believe the reasons presented above, taken together, support a Commission determination that a temporary suspension of W-W LNP requirements (as applied to Viola) is consistent with the public interest, convenience and necessity. I believe this conclusion is warranted even if any or all of these reasons, considered individually, might not warrant a temporary suspension.

Duration of a Temporary Suspension

Q. In your opinion, should the Commission attach conditions to a temporary suspension of W-W LNP requirements?

422 A. No. However, if the Commission grants a temporary suspension, I believe
423 it should make clear such action in no way prejudices any future
424 determinations it might make concerning W-W LNP issues. The
425 Commission also should emphasize that Viola must be prepared to deploy
426 W-W LNP at the end of any suspension period (unless further
427 Commission determinations or intervening events otherwise render such
428 preparation unnecessary). Finally, if the Commission grants a temporary
429 suspension, I believe it should explicitly underscore its authority to
430 reexamine such decision at any time in light of any new and pertinent
431 information.

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433

434 **Q. What duration do you recommend for temporary suspension of W-W**
435 **LNP requirements?**

436 A. I recommend that the Commission suspend these W-W LNP requirements
437 for a time period no greater than 30 months.

438

439 **Q. Why do you recommend this specific time period for a temporary**
440 **suspension of W-W LNP requirements?**

441 A. In my judgment, a suspension of approximately 2 years duration should be
442 sufficient for obtaining the additional vital information discussed in this
443 testimony. In addition, I believe this period would allow sufficient time for
444 resolution of other relevant issues, including court cases and FCC
445 proceedings that should clarify key W-W LNP issues such as transport
446 obligations and rating arrangements.

447

448 I believe a suspension less than 2 years in duration likely would not be
449 sufficient to accomplish the objectives I have outlined. At the same time, I
450 recognize it is important that the Commission not grant a suspension
451 longer than that needed for legitimate purposes. I believe a suspension of
452 approximately 2 years would appropriately balance these competing
453 considerations. I also note that the temporary suspensions of W-W LNP
454 requirements previously granted by the Commission were for 30 months
455 duration.

456

457 **Q. Does this conclude your testimony?**

458 A. Yes.

459